705. The voluntary taking of deleterious matter into the body in ignorance of its probable or possible effect seems to be considered as the unforeseen result of a contemplated act. Emphasis is placed on the fact that the means (the thing insured against) is not accidental. The court in the principal case is apparently sustained in its position though the results seem unnecessarily harsh.

INSURANCE—MURDER OF INSURED BY BENEFICIARY—RECOVERY BY ADMINISTRATOR WHERE MURDERER WILL BE SOLE DISTRIBUTEE.—The beneficiary in a life insurance policy murdered the insured and assigned all her rights under the policy. Defendant company refused to pay the policy either to the beneficiary, to the assignee, or to the administrator of the estate of the insured. The administrator sued. Insured left no children and, under statutes of the state, the murderess would be the sole distributee of the money, if recovered from the defendant. *Held,* that since it is against the policy of our law to allow one to gain from the commission of a crime, the beneficiary could not have recovered; nor could the assignee who acquired no more rights than the beneficiary had; nor can the administrator recover when the murderess will be the sole distributee of the recovery. *Johnson* v. *Metropolitan Life Ins. Co.,* (W. Va., 1919) 100 S. E. 865.

A beneficiary of a life insurance policy who intentionally kills the insured forfeits all rights under the policy. *N. Y. Mut. Life Ins. Co.* v. *Armstrong,* 117 U. S. 591; 14 HARV. L. REV. 375; *Metropolitan Life Ins. Co.* v. *Shane,* 98 Ark. 132; *Equitable Life Assurance Co.* v. *Weightman,* (Okla., 1916) 160 Pac. 629. When the alleged murderer has not been prosecuted, the burden is upon the party asserting that the insured was murdered to prove it by a preponderance of evidence, but not beyond a reasonable doubt. *Prather* v. *Michigan Mut. L. Ins. Co.,* Fed. Cas. No. 11368. The killing must have been intentional, as well as criminal, so if the beneficiary were insane, no rights are forfeited, *Holdom* v. *Ancient Order of United Workmen,* 159 Ill. 619; nor if death of insured were caused by the negligence of the beneficiary, *Schreiner* v. *High Court of Ill. C. O. F.,* 35 Ill. App. 576. No person claiming through the criminal beneficiary can recover under the policy. *Cleaver* v. *Mutual Reserve Fund Ass'n.,* [1892] 1 Q. B. 147; *Schmidt* v. *Northern Life Ass'n.,* 112 Iowa 41 (heirs); *Equitable Life Assurance Co.* v. *Weightman, supra* (assignees). However, the loss by the beneficiary of his rights does not exempt the insurer from liability under the policy, for in the absence of an alternative beneficiary, the personal representative of the insured can enforce a resulting trust in favor of the estate of the insured against the insurer. *Sharpless* v. *Grand Lodge,* 135 Minn. 35; *Schmidt* v. *Northern Life Ass'n., supra.* But (as held in the principal case) if, under the statute of distribution and descent, the murderer would be the sole distributee of the recovery, the administrator will not be allowed to recover. *McDonald* v. *Mutual Life Ins. Co.,* 178 Iowa 863. It seems notable that, although the courts will not allow a criminal to benefit through the medium of a contract, the great majority of courts hold

that, in the absence of statute providing that murderers shall not inherit the property of their victims, they can not except murderers from the operation of statutes of descent and distribution. Such courts concede the bad policy of allowing a murderer to inherit the property of his victim, but they deem themselves powerless to interfere with the statutory devolution of property. *McAllister* v. *Fair*, 72 Kans. 533; *Shellenbarger* v. *Ransom*, 41 Nebr. 631; *Owens* v. *Owens*, 100 N. C. 242; *In re Carpenter's Estate*, 170 Pa. St. 203; 4 MICH. L. REV. 653. *Contra*: *Perry* v. *Strawbridge*, 209 Mo. 621. See 7 MICH. L. REV. 71; 8 HARV. L. REV. 170; 27 *Id.* 280 Also *Ellerson* v. *Westcott*, 148 N. Y. 149, holding that the murderer acquires legal title by descent, but equity will compel him to hold it as trustee *ex maleficio* for the representative of his victim. See also 36 AM. LAW REG. & REV. (N.S.) 225; 64 U. OF PA. L. REV. 307; *Wellner* v. *Eckstein*, 105 Minn. 444; 7 MICH. L. REV. 160. Statutes have obviated the effect of the doctrine of the weight of authority at least in some states. See *Matter of Kuhn*, 125 Iowa 449; *Beddingfield* v. *Estill*, 118 Tenn. 39. On the various phases of the subject-matter involved in the principal case, see L. R. A. 1917 B, 670; 3 L. R. A. (N.S.) 726; 2 AM. & ENG. ANN. CAS. 658; 14 Id. 99.

LANDLORD AND TENANT—LEGALITY OF PURPOSE—RENT.—Plaintiff seeks to recover rent for premises leased to the defendant for saloon purposes. The lease contained a provision that the business should be conducted in accordance with the laws of Illinois and the ordinances of the city of Chicago, and gave the lessee the right to terminate the lease if the state Sunday closing law should be generally enforced in Chicago. *Held*, that the latter provision does not invalidate the lease which contemplates no violation of the law. *Hoefeld* v. *Ozello*, (Ill., 1919) 125 N. E. 5.

The general rule seems to be that mere knowledge of the seller of goods or of the vendor or lessor of property that the buyer or lessee intends an illegal use of them is no defense to an action for the price or rent. *Armfield* v. *Tate*, 29 N. C. 258 (premises leased for house of prostitution); *Brunswick etc. Co.* v. *Valleau*, 50 Iowa 120 (for gambling purposes); *Goodall* v. *Gerbe Brewing Co.*, 56 Ohio St. 257 (for unlawful sale of intoxicating liquors). It has often been asserted that in order to defeat a recovery it must be shown that the seller or lessor participated in some degree, however slight, in the wrongful intent and purpose. *Shirley* v. *Silvers*, 139 Iowa 605; *Tracy* v. *Talmage*, 14 N. Y. 162. As to what will amount to such participation, "the law finds itself in close quarters." An act such as marking liquor casks to avoid detection has been held sufficient. *Aiken* v. *Blaisdell*, 41 Vt. 655. Or a sale of furniture for use in a bawdy house. *Furniture Co.* v. *Van Alstine*, 22 Wash. 670. Again it has been said that if the lessor not only knew but expected that liquor would be sold on the premises in violation of law, the contract is void. *Mound* v. *Barker*, 71 Vt. 253. To the same effect is *Graves* v. *Johnson*, 156 Mass. 211, where the seller of liquor not only knew but expected and desired that it would be unlawfully sold. An insurance on goods known